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Indonesia's Revocation of Political Rights: Criminal Perspectives Philosophy

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ABSTRACT

Human rights are fundamental freedoms that are eternally guaranteed to all people as they are the creations of the Almighty God. As a result, it must be protected, supported, and respected. It also must not be disregarded, as neglect and human rights abuses result in human rights violations. Political rights are one of the fundamental rights that must be upheld and safeguarded by the State, the law, and the government. The Criminal Code's provision of criminal penalties for the elimination of political rights in Article 35 (1) (3), where the electoral process and electoral laws are founded, proves to conflict with the State's mission for the preservation and maintenance of political rights. This article's analysis of criminal sanctions that impact citizens' political rights in terms of punishment philosophy is urgently needed.

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1. Introduction

Human Rights (HAM) are the mainstream of world civilization, this achievement is the culmination of the human struggle that has blossomed since the beginning of human civilization both at the level of thought and practice of social life. Thoughts about human rights can be traced back to the time of the ancient Greeks, both in the context of the main goal and orientation, of social life and as the right to be free from oppression.

Donnelly explained that human rights as asserts that human rights are inalienable and universal, even with considerations of cross-cultural relativism. The key point here is that human rights are not culturally relative because culture is not the cause or a factor in the development of human rights practices. The primary sense of universality is not merely compatible with but necessarily includes an essential element of relativity. The question is not whether human rights are universal or relative, but how human rights are¹.

Human rights are basic rights that are naturally attached to humans as creatures of God Almighty and are universal and eternal. Therefore it must be protected, respected, and defended and must not be neglected, because ignoring and underestimating human rights results in the deprivation of human rights in the form of human rights violations.²The terminology ham is also interpreted as *one of the most*

¹ Nsama Jonathan Simuziya, 'Universal Human Rights vs. Cultural & Religious Variations: An African Perspective', *Cogent Arts and Humanities*, 8.1 (2021) <<https://doi.org/10.1080/23311983.2021.1988385>>.

² Law Number 39 of 1999 concerning Human Rights.

extraordinary moral devices of all times. No other nation has an even comparable potential to bring about changes in political life. But they are also one of the most opaque notions of our moral repertoire. Since the adoption of the Universal Declaration, theorists have been discussing their true nature³.

The adoption and proclamation of the Universal Declaration of Human Rights (UDHR) is the culmination of the legitimacy of human rights as a universal indicator of the protection and growth of human rights for every citizen and the whole country. The basic conception of human rights is represented through Article 1 of the UDHR: all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.⁴This basic concept fosters three basic concepts of human rights, viz⁵:

- a. Human rights have comprehensive characteristics that follow the nature of human beings, including differences in ethnicity, race, gender, age, religion, political beliefs, and forms of government.
- b. Human rights are also not disputed because the substance of human rights comes from God and is not allowed to eliminate or reject them.
- c. Human rights are subjective and individual ownership because of their nature as rational and autonomous human beings.

In the history of the life of the Indonesian nation, efforts to promote and protect human rights have experienced ups and downs. At one time this effort was successfully fought for, but at other times it was defeated by the interests of power. Finally, it is realized that the life of the nation and state that does not pay attention to the promotion and protection of human rights will always cause injustice to the wider community and will not provide a sound foundation for economic, political, social, and cultural development in the long term. The reform movement which reached its peak in 1998 has awakened the enthusiasm of the Indonesian people to make corrections to past systems and practices, especially to re-enforce the promotion and protection of human rights.

One of the human rights that must be respected, upheld, and protected by the state, law, and government is political rights. Article 4 of the Human Rights Law states The right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as an individual and equal before the law, and the right not to be prosecuted based on a law that applies retroactively is rights Human rights that cannot be reduced under any circumstances and by anyone.⁶

Political rights can be understood. While political rights are individual rights, they also come with a collective dimension. The freedoms of assembly and association require others to assemble and associate with, and all political rights, as in *different forms of freedom of expression, require a recipient. Moreover, for political rights to fulfill their democratic function as engines for social change they presuppose, to a certain extent, conflict, and disturbance*⁷.

However, in its development, the mandate entrusted to the state to safeguard and respect political rights turned out to be disharmony with the stipulation of criminal sanctions in Article 10 of the Criminal Code (KUHP). As a codification originating from Wetboek van Strafrecht (WvS), enforced based on the concordance principle since January 1, 1918, with Stb 1915 Number 732. After Indonesia's

³ Julio César Montero, 'Human Rights, International Human Rights, and Sovereign Political Authority: A Draft Model for Understanding Contemporary Human Rights, Ethics and Global Politics, 7.4 (2014), 143-62 <<https://doi.org/10.3402/egp.v7.25522>>.

⁴ Universal Declaration of Human Rights, 1948.

⁵ United Nation, Universal Declaration of Human Rights, Fundamental Social Rights at Work in the European Community, 948, pp. 118-24 <<https://doi.org/10.4324/9780429458460-10>>.

⁶ Law Number 39 of 1999 concerning Human Rights, Loc.Cit.

⁷ Karin Aberg, 'Inclusion Through Conflict: Irregular Migrants, Bonnie Honig, and Political Rights', Nordic Journal of Human Rights, 39.3 (2021), 224-42 <<https://doi.org/10.1080/18918131.2021.2008136>>.

independence, WvS continued to be enforced based on Law Number 1 of 1946, and based on this law the Book of Laws The Criminal Law received the name Criminal Code which was later re-enforced for the entire territory of the Unitary Republic of Indonesia based on Law Number 73 of 1958⁸. In addition to the provisions of Article 10 of the Criminal Code above, the revocation of certain rights which the author means is disharmony between the state's obligation to protect and respect the political rights of every citizen, but Article 35 paragraph (1) number 3 of the Criminal Code states, the right to vote and be elected in elections held according to general rules.

In addition to the Criminal Code as a juridical basis for the revocation of political rights, it also refers to a special criminal law that revokes all or part of certain rights or removes all or part of certain benefits, which have been or may be given by the Government to convicts. The application of the above criminal sanctions, especially additional criminal sanctions in Indonesia as a rule of law has shown progress in law enforcement of criminal law⁹. One of the derogations of certain rights in a judge's decision is the derogation of the right to vote and be elected to a public office as stipulated in the law. The derogation of political rights is implemented as an effort to eradicate corruption as an extraordinary crime. The technical revocation of political rights is carried out by judges through court decisions against convicted corruptors in the form of sanctions based on certainty in relevant regulations. Here is one of the convicts whose political rights have been revoked based on a court decision that has permanent legal force.

Corruption convicts Lutfi Hasan Ishaq with Register Number 1195 K/Pid.Sus/2014 in the judge's decision tried and imposed a sentence to revoke the defendant's right to take part in general elections and be elected as a state administrator. This sentence was handed down considering that the convict was a servant of the state and people's representatives (DPR RI) for the 2009-2014 term, the convict received gifts in the form of money worth Rp. 1,300,000,000.- (one billion three hundred million rupiahs) of the total agreed on the nominal value of Rp. 40,000,000,000.- (forty billion rupiahs) which is analyzed as the reward or the agreed amount of money given because of the inherent attribution authority over him,¹⁰.

Based on the cases mentioned above, the existence of defendant as a state administrator who was essentially entrusted with the mandate to organize the state by what was outlined in the law committed fraud in the form of criminal acts of corruption which enriched himself. Because the act is believed to be a disgraceful act under the law, with evidence and the results of the examination at trial the panel of judges imposed sanctions, one of which was revoking the right to be elected to public office.

As a series of scientific activities, in writing this article the author conducted a literature review search to see the differences between previous authors and this article. So that you can see opportunities and significant differences. Several previous authors, including Karin Aberg in the Nordic Journal of Human Rights with the title Inclusion Through Conflict: Irregular Migrants Bonnie Honig and Political Rights, in this study the authors place illegal migrant conflicts as violations of human rights as part of political activity by using the concept universalism and particularism.

Julio Cesar Montero in the International Journal of Ethics & Global Politics with the title Human Rights, International Human Rights, and Sovereign Political Authority; a Draft Model for Understanding Contemporary Human Rights. The results of this study emphasize two main models in analyzing human rights, namely the natural model and the political approach model, and both do not provide an accurate solution to contemporary human rights. Thus combining the two models of approach into the construction of human rights including political rights is part of the morals that are articulated as conditions that must be met.¹¹

⁸ Roni Efendi, 'Constitutionality of the Execution Waiting Period for Death Convicts in the Penalty System', Journal of the Constitution, 16.2 (2019), 296-332 <<https://doi.org/10.31078/jk1625>>.

⁹ S. M and Solihndi Is, Labor Law in Indonesia (Jakarta: Kencana, 2020).

¹⁰ Directory of Decision of the Supreme Court of the Republic of Indonesia Number 537K/Pid.Sus/2014.

¹¹ Montero, JC (2014). Loc. Cit.

Sibarani's soap in the National Proceedings with the title Legal Analysis Concerning the Revocation of Political Rights for Corruptors Based on a Human Rights Perspective and the results of the study confirm that the revocation of political rights for corruption convicts is considered constitutional with limited rights only up to five years after the convict has finished serving his sentence¹². Next article Yaris Adhial Fajrin and Ach. Faisol Triwijaya in the journal *Pandecta* with the title Prevention of Corruption Through Revocation of Political Rights: An Examination from the Perspective of Indonesian Criminal Law Renewal. The results of his research explain that the Constitutional Court Decision Number 71/PUU-XIV/2016 opening opportunities for former corruption convicts to run for office. So that sanctions for revocation of political rights for corruption convicts serving prison sentences of under five years need to be prioritized for imposition. The synergy between the two mechanisms is necessary to realize the ideals of a good and clean government that is socially just¹³.

Nyoman Mas Aryani and Bagus Hermanto in the journal *Constitution* entitled Justification of Prisoners' Political Rights: Perspectives on Human Rights and Legislation present the results of their research show's that the enactment of the General Election Commission Regulation which normalizes the prohibition of passive political rights for former convicts contains several weaknesses and was eventually annulled by the Supreme Court Decision. Viewed from the perspective of Human Rights related to political rights, in its application there must be a time limit for the revocation of rights¹⁴.

Furthermore, Dian Fajar Indak, Haris Retno Susmiyati, and Rini Apriyani in the *Legal Treatise Journal* entitled Revocation of Political Rights of Corruption Offenders in the Perspective of Human Rights explained that it is necessary to distinguish the revocation of political rights between the right to be elected and the political right to vote. Revocation of the political right to be elected is permissible for a limited time or is not absolute, meanwhile, revocation of the right to vote without a time limit for revocation is not by the principles of human rights. Because the right to vote is a fundamental right of every citizen guaranteed by law. Basic 1945¹⁵.

Revocation of political rights in the imposition of criminal sanctions is something that is desired from the existence of criminal sanctions from various theories, such as retributive theory, deterrence theory, treatment theory, and social defense theory where criminal sanctions are justifications and logical consequences for actions that have been carried out by convicts and efforts preventive so that people do not do the same thing. But what if it is analyzed from the philosophy of punishment? Because the philosophy of sentencing is a holistic and fundamental function as a foundation, normative principles, and rules as guidelines regarding punishment and punishment.

2. Method

The writing of this article uses normative legal research methods. Namely research on the law which includes legal principles, analyzing and examining positive law, namely regulations related to political rights and criminal law provisions with a legal approach and legal philosophy as the touchstone. In this way, a fundamental and comprehensive solution to the revocation of political rights will be found in the study of the philosophy of punishment. Normative legal research on the revocation of political

¹² S Sibarani, 'Legal Analysis Regarding Revocation of Political Rights for Corruptors Based on a Human Rights Perspective', in Proceedings of the National Seminar on Experts, 2019, pp. 1-6 <<https://trijurnal.lemlit.trisakti.ac.id/pakar/article/view/4378>>.

¹³ Yaris Adhial Fajrin and Ach Faisol Triwijaya, 'Prevention of Corruption Through Revocation of Political Rights An Study from the Perspective of Indonesian Criminal Law Renewal', *Pandecta Research Law Journal*, 15.1 (2020), 53-63 <<https://doi.org/10.15294/pandecta.v15i1.18744>>.

¹⁴ Nyoman Mas Aryani and Bagus Hermanto, 'Justification of the Political Rights of Former Convicts: Perspectives on Human Rights and Legislation', *Journal of the Constitution*, 17.2 (2020), 413 <<https://doi.org/10.31078/jk1729>>.

¹⁵ Dina Fajar Indah, Haris Retno Susmiyati, and Rini Apriyani, 'Revocation of Political Rights of Corruption Offenders in a Human Rights Perspective', *Jurnal Hukum Risalah*, 16.2 (2020), 68-82.

rights in this study of sentencing philosophy will move from secondary data to the scope of primary legal material.

3. Analysis and Discussion

In the conception of human rights, it is known that there are restrictions, therefore it is a mistake to understand human rights as freedom without limits, Article 29 (2) of the UDHR that limits on human rights can be sought for balancing between individual rights and public interests. This determination is required so that the rights and freedoms of others can also be protected and fulfilled. Apart from the idea of determining human rights, there is also the concept of a derogation which is translated as partition or delay. Where the rights of citizens can be restricted for a moment or forever in a very strict manner and are usually applied in precarious conditions.¹⁶

Human rights are not essential freedoms, but it is possible to be given restrictions so that Article 28I of the 1945 Constitution stipulates that "the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law and the right not to be prosecuted based on a law that applies retroactively is a human right that cannot be reduced under any circumstances", but the implementation of this right can be restricted and its realization eliminated by referring to the provisions of Article 28 J paragraph (2) UUD 1945. Thus making political rights derogable rights or human rights that can be reduced.¹⁷

Constitutional legal revocation of political rights has been determined by the Constitutional Court in its decision number 11-17/PUU/2013 which confirms the limitation of political rights based on Article 28J paragraph (2) of the 1945 Constitution. Where at least several convicts have been recorded who have had their political rights revoked as stated in the following table:

No	Convict	MA Decision Number	Decision
1	Luthfi Hasan Ishaq	1195 K/Pid.Sus/2014	<ul style="list-style-type: none"> a. Determine that the defendant is proven to be proven guilty in real terms and convincingly guilty of committing the criminal act of Corruption and Money Laundering by deelneming. b. Imposing sanctions on the defendant with a prison sentence of 18 (eighteen) years and a fine of Rp. 1,000,000,000.- (one billion rupiah) provided that if the fine is not paid it is replaced by imprisonment for 6 (six) months. c. Revoke the right of the accused to be elected to public office.¹⁸
2	Inspector General Djoko Susilo	537K/Pid.Sus/2014	<ul style="list-style-type: none"> a. Determine the defendant Inspector General. Police Drs. Sjoko Susilo,

¹⁶ Roni Efendi, 2016, Execution Waiting Period Position... Op.Cit, p. 61.

¹⁷ Roni Effendi, 2019. Constitutionality of the Waiting for Execution Period... Op.Cit.

¹⁸ Directory of Decision of the Supreme Court of the Republic of Indonesia Number 1195 K/Pid.Sus/2014.

			<p>SH, M.Sc. has been proven legally and convincingly according to law guilty of committing criminal acts of corruption by deelneming.</p> <p>b. Sentenced to 18 (eighteen) years in prison and a fine of Rp. 1,000,000,000.- (one billion rupiah) provided that if the fine is not paid, it will be replaced by imprisonment for 1 year.</p> <p>c. Punish the convict to pay compensation in the amount of Rp. 32,000,000,000.- (thirty-two billion rupiah), and if replacement money is not paid within 1 (one) month after the inkracht van gewijsde decision, the property can be confiscated by the Prosecutor and auctioned off to cover the replacement money. If the assets are not sufficient, they are sentenced to imprisonment for 5 (five) years;</p> <p>d. Punish the Defendant with additional punishment in the form of revocation of certain rights to vote and be elected to public office;¹⁹</p>
3	Anas Urbaningrum	1261 K/Pid.Sus/ 2015	<p>a. "Determines that Anas Urbaningrum has been proven clearly and convincingly guilty of committing the crime of corruption by vorgezette handling and a combination of money laundering crimes."</p> <p>b. "Send down the law 14 (fourteen) years in prison".</p> <p>c. "Send a fine to Anas Urbaningrum in the amount of Rp. 5,000,000,000.- (five billion rupiah) provided that if the fine is not paid it is replaced by imprisonment for 1 (one) year 4 (four) months";</p> <p>d. "Imposing sanctions on Anas Urbaningrum to pay compensation of Rp. 57,592,330,580.- (fifty-seven billion five hundred ninety-two</p>

¹⁹ Directory of Decision of the Supreme Court of the Republic of Indonesia Number 537K/Pid.Sus/2014.

			<p>million three hundred thirty thousand five hundred and eighty rupiahs) and USD 5,261,070 (five million two hundred sixty-one thousand seventy United States Dollars) provided that if Defendant has not paid the replacement money within 1 (one) month after the Court's decision obtains permanent legal force, then the property is confiscated and auctioned off to cover the replacement money, whereas if the property is not sufficient to pay the replacement money then the penalty is imprisonment for 4 (four) years";</p> <p>e. "Imposed an additional sentence against the defendant Anas Urbaningrum in the form of revocation of the right to be elected to public office";²⁰</p>
4	Hj. Ratu Atut Chosiyah, SE	258 K/Pid.Sus/2015	<p>a. "Declaring the defendant Hj. Ratu Atut Chosiyah, SE has been legally and convincingly proven guilty of jointly committing the crime of corruption.</p> <p>b. "Punished the Defendant therefore with imprisonment for 7 (seven) years and a fine of Rp. 200,000,000.00 (two hundred million rupiahs) provided that if the fine is not paid it is replaced with imprisonment for 6 (six) months";</p> <p>c. "Determining to revoke the Defendant's right to be elected to a public position";²¹</p>

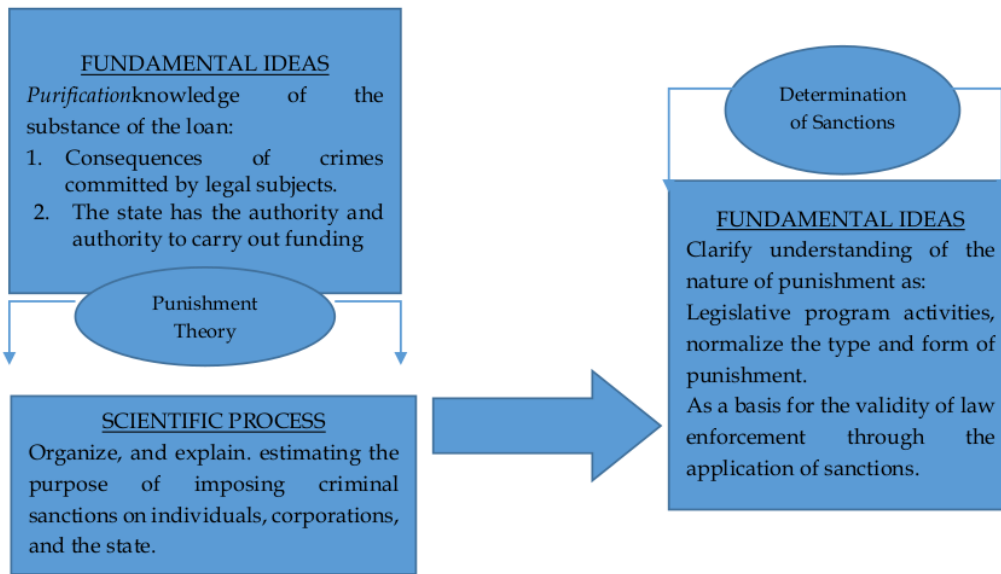
Based on the analysis of the table above, confirms that it is justified to limit and reduce human rights as mentioned above, which can be done using a retributive (retaliatory) punishment approach because this retributive aspect is inherent like criminal sanctions. The existence of criminal sanctions is an effort to restore social harmony which is disrupted as a result of criminal acts, including criminal acts that are threatened with revocation of political rights. Political rights as derogable human rights can be understood comprehensively and fundamentally from the perspective of the philosophy of punishment.

²⁰ Directory of Decision of the Supreme Court of the Republic of Indonesia Number 01261 K/Pid.Sus/2015.

²¹ Directory of Decision of the Supreme Court of the Republic of Indonesia Number 258 K/Pid.Sus/2015.

The philosophy of punishment essentially has two main functions. First, the fundamental function, namely as a foundation and normative principles or rules that provide guidelines, criteria, or paradigms on criminal and sentencing issues. This function is formally and intrinsically primary and contained in every teaching system of philosophy. That is, every principle established as a principle or rule is recognized as a truth or norm that must be upheld, developed, and applied. Second, the function of theory: in this case as a meta-theory. Thus crime and sentencing as a science or penology will be closely related to the philosophy of sentencing²² because sentencing philosophy functions as a theory that underlies and underlies every sentencing theory.

Thus the philosophy of punishment aims at the type of justice to be achieved by the criminal justice system. In the realm of in-concrete law, how can the panel of judges as holders of applicative policies for determining judge decisions also have a goal of theoretical dimensions and are obliged to be guided by the values of justice of the justiciable²³. In addition, this element was expressed by Sue Titus Reid as the justification of the Justice Model for modern justification in the criminal justice system. Furthermore, the chart below describes sentencing philosophy as having two functions, schematically the relationship between sentencing philosophy, sentencing theory, and the application of sanctions, as follows:



From the chart above, several important points can be analyzed regarding the relevance of the philosophy of punishment and the system of criminal sanctions, as follows:

- a. Fundamental functions are basic functions and normative principles or rules as references, characteristics, or perspectives on penitential legal issues. This function is formally and intrinsically primary and is contained in every teaching of the legal philosophy system. The point is that every principle that is implemented as a principle or rule is what is recognized as a truth or norm that must be upheld, developed, and applied.
- b. The function of the theory is as a meta-theory, meaning that the philosophy of punishment functions as a theory that underlies the birth of sentencing theories. Various sentencing theories

²² M Sholehuddin, Sanction System in Criminal Law (Jakarta: PT. Raja Grafindo Persada, 2003).

²³ Luh Rina Apriani, 'Application of Criminal Philosophy in Corruption Crimes', Judicial Journal, 3.1 (2010), 1-14 <<https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/11>> .

are retributive theories, relative or deterrence/utilitarian theories, integrative theories, treatment theories, and social protection theories (social deence).²⁴.

The two functions of the sentencing philosophy above, there is one of the penal philosophies in the penal system in Indonesia, namely the Pancasila penal philosophy which is appropriate to answer the constitutionality of the revocation of political rights. This is based on Pancasila as a social philosophical system having basic components consisting of a value system, Pancasila's philosophical view of humans, and how humans view the existence of nature, human personality, and God, including the state. From a value system perspective, in general, humans differ in the world of positive values and negative values. Every person in his life is always actively or passively involved with the world of values²⁵.

*Beginning from the Reformation Era or Reformasi Era, Indonesia has served as a sort of vast laboratory for new policies focused on the fight against impunity, the quest for truth and justice, and the success of unity in fractured societies*²⁶. This concept is legitimized through Pancasila as a criminal perspective in Indonesia, starting from the assumption that analytically the Pancasila precepts essentially provide a loophole for formulating what is right and good for Indonesian people and society. Pancasila with its precepts formulates the principle or abstract nature of Indonesian human life which is based on three comprehensive and fundamental human nature relations. In addition, it contains values that live in a society in tackling the problem of crime²⁷. If the First Precept provides an ontological framework, the Second Precept provides a normative framework, then based on the two Precepts it can be developed into the other three Precepts as an operational framework in the life of the nation (Third Precept), state (Fourth Precept) and society (Fifth Precept).

The first precept is referred to as an ontological framework (the nature of existence) because the first precept contains an affirmation of the nature of Indonesian humans before God Almighty. This precept contains the acknowledgment that Indonesian people are only creatures of God Almighty. In addition, it contains the obligation/demand to respect and obey God. The form of the relationship can glorify God, see the Greatest, and do what God wants. The Precepts of Belief in the One and Only God are the soul of Pancasila as a principle that contains imperatives/demands to comply with the nature of God. The First Precept provides a framework of values about who humans are in Indonesia, namely humans who believe in the power of God Almighty, through the First Precept humans have a guideline for formulating true and false values according to the human mind's understanding of their God. The second precept is referred to as a normative construction because it contains imperative normative principles for living or acting fairly and morally. Adab shows spiritual behavior as a creation of God Almighty, while Fair shows an attitude that projects a human being with morals. Humans as creatures created by the Creator are endowed with an independent conscience and will, and must be respected and respected according to their dignity. The third precept emphasizes the limits on personal interest. Every citizen in Indonesia must be able to control himself so that he is not only oriented toward personal interests if the interest of the state and nation demand it. The Fourth Precept emphasizes the lines that must not be crossed **in the life of the nation and state**. That wise and prudent behavior is obedience to every decision taken by society. Every citizen in Indonesia is obliged to control himself, obey and comply with the law, maintain discipline, and respect and comply with every decision of the people that have been taken constitutionally and democratically. The Fifth Precept gives guidance on

²⁴ Dwidja Priyanto, *Prison Sentence Implementation System in Indonesia* (Bandung: PT. Rafika Aditama, 2009).

²⁵ Muhammad Noor Syam, *Pancasila in terms of historical, constitutional, juridical, and philosophical aspects* (Malang: University of Brawijaya Publishing Institute, 1981).

²⁶ Aria Zurnetti and Nani Mulyati, 'Counterterm Measures Model of Village Fund Corruption Through Adat Criminal Law Approach and Local Wisdom in West Sumatra', *Nagari Law Review*, 5.2 (2022), 116 <<https://doi.org/10.25077/nalrev.v.5.i.2.p.116-127.2022>>.

²⁷ Diana Arma Tenofrimer, Yoserwan, 'Eradication of Nagari-Based Drug Crime as a Non-Penal Measure in West Sumatra', *Nagari Law Review*, 4.1 (2020), 65-78.

growing and developing the awareness of each individual as a social being who upholds justice along with other people as fellow citizens²⁸.

Thus, the basis for thinking about punishment from the perspective of Pancasila must be a projection of the integrity of the precepts in Pancasila above. Describing the fundamental principles of sila by sila integrally will only produce abstract and disharmonized concepts and does not touch the real substance of Pancasila. The principles of Pancasila are reciprocally related to one another and are directed at a balanced arrangement. Punishment in the Pancasila perspective must be oriented towards the principles of criminal responsibility which must pay attention to the condition of psychological maturity and normalcy which includes three other abilities namely understanding the direction of the factual goals of one's actions, awareness that these actions are socially prohibited, the existence of free will concerning these crimes.

So political repeal in the penal system is the legitimacy for humans as creatures of the Creator who has committed prohibited acts and wants the consequences. So the form of punishment is not justified if it conflicts with the beliefs adhered to by any religion in Indonesian society. Punishment against legal subjects must emphasize the awareness of the faith and piety of the convict, criminal sanctions can lead the perpetrator to repent and become a human being of faith and obedience. In other words, punishment is not just retaliation and deterrence as well as mere protection but must develop the mentality of the convict and transform the convict into a better one, namely a religious person. In this perspective, the revocation of political rights is a form of social defense with a penal approach that is absolute and does not conflict with the First Precepts, this is based on normative logical considerations, the existence of convicts as creatures of God who should properly guard the mandate and uphold people's sovereignty but commit betrayal of the mandate. by committing acts of corruption. In addition, the convict also fulfills the elements that are qualified in the types of corruption as referred to in the aquo law²⁹. The problem in the Indonesian nation that continues to occur and has never stopped is the problem of corruption. Corruption is like a disease that will continue to grow even though it is often treated³⁰. So that the derogation of political rights, the convict realizes that what is imposed by the state for his mistakes is in proportion to the actions that have been committed, the revocation of the convict's political rights will also be used as a tool to regulate other human beings not to do the same thing. As a good creature of God, he always takes lessons from every event that is experienced by other humans and avoids these events from himself, it is clear that the revocation of political rights does not conflict with any religious beliefs held by Indonesian people because no religion justifies its adherents committing acts of corruption.

The legitimacy of the nobility of human dignity as creatures of God Almighty. Punishment is not justified in injuring their most fundamental human rights and must not degrade their dignity for any reason. However, concerning the revocation of political rights, one cannot only look at it from the perspective of the convict whose political rights have been revoked. This means that in analyzing criminal sanctions, of course, one cannot absolute the rights of convicts and exaggerate the rights of the state and the rights of the Indonesian people which have been confiscated by convicts. So that the revocation of political rights is not a form of violation of human rights that demeans the nobility and dignity of God's creation.

4. Conclusion

Political rights as constitutional rights or human rights granted by the Constitution are regulated in Article 28D paragraph (3), namely that everyone has the right to obtain equal opportunities in

²⁸ Sholehuddin.

²⁹ Taufik Rachman and Lucky Raspati, 'Measuring the Meaning of Harming the State's Economy in the Corruption Law', *Nagari Law Review*, 4.2 (2021), 225-38.

³⁰ Aria Zurnetti and Nani Mulyati.

government. The meaning of the article mentioned above certainly leads to the conception of human rights in a non-derogable form. Indeed, in essence, non-derogable rights are human rights that cannot be reduced or cannot be derogated. As with political rights that every citizen has, there is a basic right to obtain equal opportunities in government, both the right to be elected and the right to vote. The translation is correct as long as the owner of the right does not commit acts that are prohibited by law. So in the beginning the state has given political rights to participate in government,

References

Book

- Agustina, Shinta. (2015). *Principle of Lex Specialist Derogat Legi Generally in Criminal Law Enforcement*, Jakarta: Themis Book
- Dwidja Priyanto. (2009). *Prison Sentence Implementation System in Indonesia* (Bandung: PT. Rafika Aditama)
- Eka Dermaputra, *Pancasila Identity and Modernity; Ethical and Cultural Review* (Jakarta: PT. BPK Gunung Mulia, 1997)
- International Covenant on Civil and Political Rights*, *The New England Journal of Medicine*, 1976, pp. 259-60
- Is, S. M and Sobandi. (2020). *Labor Law in Indonesia*, Jakarta: Kencana.
- JE Sahetapy. (1992). *A Special Study Regarding Death Penalty Against Premeditated Murder*, Jakarta: Rajawali Pres.
- Muhammad Noor Syam. (1981). *Pancasila From a Historical, Constitutional, Juridical and Philosophical Viewpoint*, Malang: Publishing Institute, University of Brawijaya.
- Reid, Sue Tirus (1987). *Criminal Justice, Procedures and Issues*, New York: West Publishing Company.
- Roni Efendi, 'State of the Waiting Period for Death Convicts in the Penal System' (Andalas, 2016)
- Sholehuddin, M. (2003). *Sanction System in Criminal Law*, (Jakarta: PT. Raja Grafindo Persada)(2019)
- Sunarjo Wreksosuhardjo. (2001). *State Juridical Pancasila Science and Pancasila Philosophy* (Yogyakarta: Andi Offset).

Journal

- Aberg, Karin, (2021). "Inclusion Through Conflict: Irregular Migrants, Bonnie Honig, and Political Rights", *Nordic Journal of Human Rights*, 39(3): 224-42
<https://doi.org/10.1080/18918131.2021.2008136>

- Apriani, Luh Rina. (2010). "Application of Criminal Philosophy in Corruption Crimes", *Judicial Journal*, 3 (1): 1-14 <<https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/11> >
- Aria Zurnetti and Nani Mulyati. (2022). "Counter Measures Model of Village Fund Corruption Through Adat Criminal Law Approach and Local Wisdom in West Sumatra", *Nagari Law Review*, 5 (2): 116-127, , 116 <<https://doi.org/10.25077/nalrev.v.5.i.2.p.116-127.2022>>
- Aryani, Nyoman Mas, and Bagus Hermanto. (2020). "Justification of Political Rights of Former Convicts: Perspectives on Human Rights and Legislation", *Journal of the Constitution*, 17 (2): 413 <https://doi.org/10.31078/jk1729>
- Efendi, Roni. (2019). "Constitutionality of the Execution Waiting Period for Death Convicts in the Penal System", *Journal of the Constitution*, 16.(2): 296-332 <<https://doi.org/10.31078/jk1625>>
- Emiliya Febriyanti. (2021). "Comparison of Criminal Liability of Directors in Indonesia", *Nagari Law Review*, 4(2): 210-24
- Fajrin, Yaris Adhial, and Ach Faisol Triwijaya. (2020). "Prevention of Corruption Through Revocation of Political Rights An Study from the Perspective of Indonesian Criminal Law Renewal", *Pandecta Research Law Journal*, 15 (1): 53-63 <<https://doi.org/10.15294/pandecta.v15i1.18744>>
- Indah, Dina Fajar, Haris Retno Susmiyati, and Rini Apriyani. (2020). "Revocation of Political Rights of Corruption Offenders in a Human Rights Perspective", *Jurnal Hukum Risalah*, 16 (2): 68-82
- Montero, Julio César. (2014). "Human Rights, International Human Rights, and Sovereign Political Authority: A Draft Model for Understanding Contemporary Human Rights, Ethics and Global Politics", 7.4 (2014), 143-62 <https://doi.org/10.3402/egp.v7.25522>
- Sibarani, S, (2019). "Legal Analysis Regarding Revocation of Political Rights for Corruptors Based on a Human Rights Perspective", *Proceedings of the National Seminar on Experts*, pp. 1-6 <<https://trijurnal.lemlit.trisakti.ac.id/pakar/article/view/4378>>
- Simuziya, Nsama Jonathan (2021). "Universal Human Rights vs. Cultural & Religious Variations: An African Perspective", *Cogent Arts and Humanities*, 8(1) (2021) <https://doi.org/10.1080/23311983.2021.1988385>
- Taufik Rachman and Lucky Raspati. (2021), "Measuring the Meaning of Harming the State's Economy in the Corruption Law", *Nagari Law Review*, 4(2): 225-38
- Tenofrimer, Yoserwan, Diana Arma, (2020). "Eradication of Nagari-Based Drug Crime as a Non-Penal Measure in West Sumatra", *Nagari Law Review*, 4 (1): 65-78

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K/Pid.Sus/2015

Directory of Decision of the Supreme Court of the Republic of Indonesia Number 1195 K/Pid.Sus/2014

Directory of Decision of the Supreme Court of the Republic of Indonesia Number 258 K/Pid.Sus/2015

Directory of Decision of the Supreme Court of the Republic of Indonesia Number 537K/Pid.Sus/2014

United Nation, Universal Declaration of Human Rights, Fundamental Social Rights at Work in the
European Community, 1948, pp. 118-24 <<https://doi.org/10.4324/9780429458460-10>>

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